IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Skott C. Klebe	**CONFIRMATION NO. 1320**
Application No.	10/616,379	This Response to Office Action is being electronically filed using the U.S. Patent and Trademark Office's EFS Web on January 21, 2010
Filed:	July 9, 2003	
Title:	**METHOD AND APPARATUS FOR DISTRIBUTING SECURE DIGITAL CONTENT THAT CAN BE INDEXED BY THIRD PARTY SEARCH ENGINES**	
Group Art Unit:	2435	
Examiner:	L. T. Truvan	
Attorney Docket:	94448	

BRIEF IN SUPPORT OF PRE-APPEAL REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Action mailed August 21, 2009, please enter the following brief in support of the co-filed Pre-Appeal Request for Review. A Notice of Appeal is also submitted herewith.

Claims 1-30 are pending in the above-identified application and stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Girardot, et al. (Efficient Representation and Streaming of XML Content Over the Internet Medium) and further in view of Lui, et al. (U.S. Patent No. 6,340,977). Applicants respectfully observe that at least some of these rejections are based upon clear error.

I. Clear Error: Applicants in no way acknowledged that the Girardot reference randomly assembled fragments into a scrambled document

The Applicant respectfully submits that the Examiner misconstrued arguments presented in Applicant's response of September 29, 2008 to summarily dismiss arguments presented in the Applicant's later response of May 18, 2009. More particularly, in the rejection dated August 21, 2009, the Examiner states: "As per argument on pg. 12, that Girardot does not randomly assembl[e] the phrases into a scrambled document. Girardot includes encoding which involves fragmenting the document and applicant acknowledges (on pg. 10 of response 9/29/0[8]) that Girardot randomly assembl[es] the fragments into a scramble[d] document and at the destination reassemble[s] and reconstruct[s] the document structure. Thus, Girardot reads on claimed randomly assembling the phrases into a scrambled document." (Aug. 21, 2009 Office Action, pg. 2-3).

This is an unfortunate mischaracterization of the Applicant's previous September 29, 2008 filing. The reference to Girardot on page 10 of the response states:

> The examiner states that the Girardot article discloses randomly assembling the fragments into a scrambled document. However, this ***cannot be the case***, because the purpose of the Girardot system is to stream a document to a destination and then to reconstruct the document at the destination. If the fragments were randomly assembled at the source, it would not be possible to reconstruct the document at the destination. From the Girardot description in paragraph 3.1 (page 68, second column) it is clear that the client at the destination reconstructs the document structure (a document object model or DOM tree) from the structure information transmitted to it. From paragraph 2.3 (also on page 68, first column) it is clear that the streaming order is also prearranged. (Sept. 28, 2008 Office Action, pg. 10, emphasis added).

Indeed, Applicant contended that the Girardot reference did *not* randomly assembled the fragments into a scrambled document, the exact opposite characterization given this statement in the Office Action. Applicant's contention that the Girardot reference does not randomly assemble the phrases into a scrambled document has been consistent throughout prosecution. Further, as discussed below, the Girardot reference does not in fact disclose and, indeed, teaches away from such a limitation by systematically assembling content.

II. **Clear Error: The Girardot reference does not disclose "randomly assembling the phrases into a scrambled document"**

The Girardot reference describes a particular approach to representing, and then streaming, XMP content via the Internet. The Girardot reference compresses, encodes, and streams XML structures and data via the Millau algorithm. Further, the Girardot reference labels, parses, fragments, and prioritizes the fragments. Each of the fragments is then streamed independent of any other fragments. Then, a receiving platform reconstructs the original document, as closely as possible given that the downloaded content is based on a prioritized basis. Thus, more important elements are downloaded first and then less important information can be delayed if the network is busy.

The Applicants respectfully submit that the Girardot reference, which employs priority downloading, cannot be viewed as disclosing randomly assembling phrases. Specifically, claims 1, 11, and 21 recite "randomly assembling the phrases into a scrambled document such that the scrambled document contains at least nearly all of the words and at least most of the phrases as are contained in the digital content." Nonetheless, in response to the Applicant's argument that Girardot does not disclose this element, the Office Action summarily dismisses those arguments by misconstruing previously submitted statements and, then, merely recites the claim limitation and cites to pages 68 and 69 of the Girardot without any further articulation of the reasons regarding why or how the Girardot reference suggests this limitation. (Aug. 21, 2009 Office Action, pg.2-3, para. 4; pg.4, lines 3-5). Thus, the Examiner both incorrectly characterizes previous statements made by the Applicants and incorrectly characterizes the Girardot reference by ignoring much of the teachings in that reference.

MPEP 2142.02, Part VI requires that a prior art reference be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. The Girardot reference, as a whole, clearly teaches away from randomly assembling the phrases into a scrambled document, as recited in claims 1, 11, and 21, by instead systematically assembling the fragments into a previously determined order. More particularly, to the extent that the Girardot reference provides fragments of the data, the Girardot reference also provides for prioritizing

those fragments so that those fragments are downloaded systematically, in a very specific order. Such a prioritized order of presentation is the opposite of "random" assembling of those phrases. In short, since the purpose of the Girardot reference is to assemble the fragments according to their prioritization, the Girardot reference specifically teaches away from the randomly assembly required by our claims. Therefore, the Girardot reference fails to teach this limitation, and, indeed, when examined in context, teaches away from this limitation.

In addition, the Lui reference also does not disclose "randomly assembling the phrases into a scrambled document." The Lui reference discloses a cooperative help assistance (CHA) program that is executed by a client computer to assist the end user when using a given software application. To aid in these regards, and as disclosed at columns 30 and 31, the Lui reference provides a mechanism for providing commentary to the end user. This commentary can comprise a simple exclamation such as "good" or can comprise a more complicated statement or observation. The Lui reference suggests using a set of fragments that can be combined, for example, to express various "moods, intonations, or expressions that generally attempt to assemble or build variety and character into the presentation." (Col. 31, lines16-18). The Lui reference cannot teach or disclose random assembly of phrases into a scrambled document because the assembly of the Lui reference's expression fragments cannot be "random" or the resultant speech will be nonsense. Instead, by definition, the Lui reference must ensure that the fragments are carefully ordered in a selective manner to ensure that the resultant expression will, in fact, convey the desired content or sentiment. Thus, none of the cited references teach this requirement.

Accordingly, no combination of the Girardot and Lui references will yield a random assembly of phrases into a scrambled document. Thus, the Applicant respectfully observes that independent claims 1, 11, and 21 cannot be rendered obvious by these references.

III. **Clear Error: The Girardot reference also does not disclose "generating a text stream from the digital content by stripping all graphic information and punctuation from the digital content"**

The Girardot reference does not disclose stripping the digital content of graphical

information and punctuation, contrary to the Examiner's conclusory contention referencing "pg.67-abstract and pg. 68-3" of the Girardot reference. (Aug. 21, 2009 Office Action, pg.2, para. 5). Indeed, the cited portions of the Girardot reference do not disclose any sort of stripping of particular information but instead disclose streaming data *including* multimedia content such as graphic information. Specifically, the Girardot reference generates "a data stream which carries the multimedia content in binary compressed format." (Girardot, pg.68, section 3.1). The Girardot reference, therefore, teaches away from stripping graphical information by explicitly teaching a manner of streaming that information in a data stream. (Girardot, pg. 68, section 3.1). In short, the Examiner incorrectly cites to a portion of the reference doing exactly the opposite of the claimed element (stripping all graphic information and punctuation from the digital context) by citing a portion of the Girardot reference that streams "XML documents with text and multimedia." (Girardot, abstract). Thus, it is respectfully submitted that the Office Action incorrectly cites to the Girardot reference as teaching stripping graphic information and punctuation.

IV. Conclusion

We respectfully submit that there exists at least one clear error in the rejection of at least one claim. Accordingly, we request that the application be allowed or that prosecution be re-opened.

Date: January 21, 2010

Respectfully submitted,

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